

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 384 of 1998

with

SPECIAL CIVIL APPLICATION NO 871 OF 1998

with

SPECIAL CIVIL APPLICATION NO 10667 OF 1998

with

SPECIAL CIVIL APPLICATION NO 10669 OF 1998

with

SPECIAL CIVIL APPLICATION NO 10672 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABUBHAI DWARKAPRASAD GUPTA

Versus

SURAT MUNICIPAL CORPORATION

Appearance:In all the matters :

MR PB MAJMUDAR for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

MR MUKESH PATEL ASSTT. GP BY DS for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/02/99

ORAL JUDGEMENT

Rule. Shri P.G.Desai and Shri M.A.Patel waive the service of the rule on behalf of the respondents.

At the request of the learned counsels for the parties and keeping in view the common questions of law and facts involved in all these petitions as well as identical reliefs prayed for therein, same are taken up for hearing together and are being disposed of by this common judgment.

2. The facts of the case are taken in brief from the special civil application no. 384 of 1998 to the extent where the same are necessary for deciding these matters. All the petitioners as per their case, are doing the petty business on larry placed at different places at Athwa Lines in the city of Surat. It is the case of the petitioners that they were doing petty business by keeping larry in the area reserved by the Corporation for hawking zone. The petitioners' grievance in these petitions is that though they are doing their petty business in the larry in the area reserved for hawking zone by the respondent Corporation, as per the scheme framed by it pursuant to the judgment of the Hon'ble Supreme Court, officers and employees of the respondent Corporation are not permitting them to do their business. Prayer has been made in these petitions that the respondent Corporation, its officers and employees and the Police Commissioner Surat City be directed not to disturb the petitioners from carrying on their business on hand larry placed at respective places as mentioned in the special civil applications.

3. Mr. P.G.Desai, the learned counsel for the respondent Corporation submits that the petitioners are not having any licence to do their business in hand larry. It is next submitted that the petitioners are not doing their business in accordance with the scheme as framed by the respondent Corporation in pursuance of the decision of the Hon'ble Supreme Court. Lastly it is submitted that the petitioners cannot keep their hand larry stationary but they have to keep it moving; the petitioners cannot fix their larry at one place in the hawking zone.

4. In rejoinder to the submissions made by Mr. Desai, the learned counsel for the respondent Corporation, Mr. Majmudar, the learned counsel for the petitioners has submitted that so far as the grievance that the petitioners are not having licence is concerned, if there is any fault, it lies with the Corporation. The petitioners had applied long back for grant of licence to them to the Corporation but the Corporation is sitting tight over their applications. He has submitted that the respondent Corporation may not be permitted by this Court to take advantage of its own inaction or omission. So far as the second contention is concerned, he has submitted that the petitioners will do their business strictly in accordance with the scheme framed by the Corporation in pursuance of the judgment of the Supreme Court and he filed on the record of the special civil application undertaking of the petitioners to this extent.

5. In sur arguments, learned counsel for the respondent Corporation submitted that in case the petitioners have already applied for grant of licence to them to the respondent Corporation, the Corporation will decide the same in accordance with law within reasonable time. He has further stated that even earlier, if the applications have not been filed by the petitioners, still if they file their applications for licence, same will be decided by the Corporation within reasonable time. So far as the undertaking furnished by the petitioners is concerned, learned counsel for the respondent submitted that in case the petitioners do their business strictly in accordance with the scheme framed by the Corporation in pursuance of the judgment of the Supreme Court, the officers and/or the employees of the Corporation cannot stop the petitioners from doing their business. in reserved hawking zone.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

In the undertaking filed by the petitioners, they have undertaken that they will do their business as per the scheme framed by the respondent Corporation in pursuance of the judgment of the Hon'ble Supreme Court.

The Scheme is not on record of the special civil application. I have not seen the scheme nor is it made available to the Court for decision of the dispute between the Corporation and the petty larry holders. It is expected of the Corporation to make known to these

petitioners what are the terms and conditions of the scheme framed by the Corporation in pursuance of the judgment of the Supreme Court subject to which or on fulfillment thereof they can do their business in the reserved hawking zones. It is advisable to the Corporation as well as I am of the opinion that it is in the fitness of the things that a copy of the relevant terms and conditions of the scheme may be made available to each petitioner free of cost.

6. In view of the undertaking given by the petitioners and also in view of the statement made by the learned counsel for the respondent Corporation, nothing more remains to be gone into and decided by this Court so far as the first grievance of the petitioners is concerned. However, so far as the second grievance is concerned, it is suffice to say that in case if the applications of the petitioners are pending before the respondent Corporation, or where they now file their application, same has to be decided finally by the competent officer of the respondent corporation in accordance with law within the period of fifteen days from the date of receipt of the writ of this order. The petitioners are not doing their business and till the matter of grant of licence is decided by the respondent Corporation and the licence is granted to all of them or to some of them, then there after, they all or those to whom licence is granted will do their business in larry but strictly in accordance with the scheme framed by the Corporation in pursuance of the judgment of the Hon'ble Supreme Court and the respondent Corporation, its officers and employees will not create any obstruction or hurdle in the way of the petitioners licensees in carrying on their business in larry in the reserved hawking zone of the Corporation in Surat City. All these special civil applications are disposed of accordingly. Rule in each of the petitions stands disposed of accordingly. No order as to cost.

19.2.1999. (S.K.Keshote,J.)

VYAS